



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 12, 1997

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Chris Sullivan  
555 North Reo Street  
Tampa, Florida 33609

RE: MUR 4434  
Chris Sullivan

Dear Mr. Sullivan:

On September 9, 1997, the Federal Election Commission found that there is reason to believe you violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Subpoena to Produce Documents and Order to Submit Written Answers must be submitted within 30 days of your receipt of this subpoena and order. Any additional materials or statements you wish to submit should accompany the response to the subpoena and order. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this subpoena and order. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter.

Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



John Warren McGarry  
Chairman

Enclosures  
Subpoena and Order  
Factual and Legal Analysis  
Procedures  
Designation of Counsel Form

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

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)  
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MUR 4434

**SUBPOENA TO PRODUCE DOCUMENTS**  
**ORDER TO SUBMIT WRITTEN ANSWERS**

TO: Chris Sullivan  
555 North Reo Street  
Tampa, Florida 33609

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.


Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his  
hand in Washington, D.C. on this 12th day of September, 1997.

For the Commission,

  
John Warren McGarry  
Chairman

ATTEST:

  
Marjorie W. Emmons  
Secretary to the Commission

Attachments  
Instructions  
Definitions  
Questions and Production of Documents

### **INSTRUCTIONS**

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

**The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.**

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1994 to the present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

### **DEFINITIONS**

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all employees, agents or attorneys thereof.

"Outback" shall mean Outback Steakhouse of Florida, Inc. and all predecessor and successor corporations.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained. For all types of documentary records requested, if any of these records are maintained on any storage format for computerized information (e.g., hard drive, floppy disk, CD-ROM), provide copies of the records as maintained on that storage format in addition to hard (i.e., paper) copies.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

**QUESTIONS AND PRODUCTION OF DOCUMENTS**

1. For the period January 1, 1992 to the present, describe each position held by you at Outback. Include in your descriptions your title in each position, your duties and responsibilities, and the time period in which each position was held.
2. Identify each person from whom you solicited a contribution for Mark Sharpe for Congress. Include in your identification the method used in soliciting each person, whether by telephone call, written document, in person, or any other method. Produce all documents which relate in any way to your solicitation of contributions to be made to Mark Sharpe for Congress.
3. Describe each meeting at which you, Mark Sharpe or any other representative of Mark Sharpe for Congress, and any other Outback officer were present. Include in your description: 1) the date of the meeting; 2) the location of the meeting; and 3) the topics of discussion of the meeting. Identify all persons who attended each meeting. Produce all documents prepared by you for use at each meeting and all notes taken by you at each meeting. Produce any other document which relates to any such meeting.
4. Identify all documents consulted in responding to this Subpoena and Order. Identify all individuals, not otherwise identified in response to any of the above questions, who have knowledge or information related to the answers to the above questions.

# FEDERAL ELECTION COMMISSION

## FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Chris Sullivan

MUR: 4434

### **I. GENERATION OF MATTER**

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

### **II. FACTUAL AND LEGAL ANALYSIS**

#### **A. Applicable Law**

Pursuant to 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(b) and (d), it is illegal for any corporation to make a contribution in connection with any election for Federal office, and for any officer or director of a corporation to consent to any such contribution. The term "contribution" means "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate [or] campaign committee . . . in connection with" an election to Federal office. 2 U.S.C. § 441b(b)(2). Employees of a corporation may make "occasional, isolated or incidental use of the facilities of the corporation for individual volunteer activity in connection with a Federal election and will be required to reimburse the corporation only to the extent that the overhead or operating costs of the corporation are increased." 11 C.F.R. § 114.9(a)(1). "Occasional, isolated or incidental use" means, when used by employees during working hours, "an amount of activity . . . which does not prevent the employee from completing the normal amount of work which that person usually carries out during such work period." 11 C.F.R. § 104.9(a)(1)(i). A corporation may suggest to



its restricted class that they contribute to a particular candidate, without that action being considered a corporate contribution or expenditure, but may not facilitate the making of the contribution or act as a conduit for the contribution. *See* 11 C.F.R. § 114.3(a)(1); *see also* Advisory Opinion 1987-29. When a corporation facilitates the making of a contribution by a person to a political committee, that action is in itself a contribution by the corporation to that same political committee.

### **B. Analysis**

Based on evidence in the Commission's possession, Outback Steakhouse of Florida, Inc. ("Outback") facilitated the making of contributions to Mark Sharpe for Congress, the principal campaign committee of Mark Sharpe in the 1994 race for the House seat from Florida's 11th Congressional district ("the Sharpe campaign"). Joseph Kadow, Outback's General Counsel, had extensive involvement in the Sharpe campaign and in Outback's efforts to facilitate contributions to the Sharpe campaign. Chris Sullivan, Outback's current Chief Executive Officer, consented to Outback's facilitation of contributions to the Sharpe campaign.

The facts of this matter are similar in certain respects to a particular fact pattern in MUR 3672 where the Commission found probable cause to believe that corporate facilitation had occurred. In that fact pattern, a corporate executive solicited, collected and forwarded campaign contributions from corporate personnel. Among the significant factors in this decision were:

- (1) the executive normally handled the political and charitable functions of the corporation;
- (2) the executive solicited exclusively inside the corporation; (3) the executive delegated certain tasks to his secretary; (4) the executive was doing fundraising that had been requested of the

corporation's CEO; and (5) the fundraising was described to the executive's fellow personnel as a corporate endeavor.

Here, though the facts are somewhat different, they demonstrate the same sort of corporate involvement and purpose as existed in the MUR 3672 fact pattern.

First, statements reported in the *Tampa Tribune* demonstrate Outback's corporate interest and involvement in the Sharpe campaign. Kadow appears to confirm Outback's interest in the race, and in supporting Sharpe in particular, stating: "We asked our friends for help. Nobody's denying that. . . . We thought this was a race Mark could win, and we thought [the incumbent] was someone who had not been a friend to our business or to business in general." Rick Fontaine, the treasurer of Mark Sharpe for Congress at the time in question, notes that Kadow, as Outback's corporate attorney, would travel to Outbacks across the country and then return with campaign checks. After Kadow would arrive at night at campaign headquarters with contribution checks, the two "would go outside and talk or go next door to the Marriott." Another campaign worker, a volunteer named Terry Spirio, also remembers Kadow "bringing in lot of checks," and "remembers Sharpe meeting often with Outback officials at their corporate office."

Second, Outback appears to have incurred fundraising costs on behalf of the Sharpe campaign through Joseph Kadow's travel described above. It appears that Kadow may have either used the Outback corporate jet for these trips, or had his air travel costs paid for by Outback.

In addition, Outback apparently assumed other costs involved in fundraising on behalf of Sharpe. According to information in the Commission's possession, Outback incurred costs of \$450 due to activity by Kadow and his secretary on behalf of the campaign at the office. The Sharpe campaign never reimbursed Outback for these costs. The Commission's information shows that Kadow reimbursed Outback himself, but not until sometime in 1996, at least 14 months after the election. Kadow's apparent use of transportation paid for by Outback, and Outback's absorption of fundraising costs incurred by Kadow and his secretary, strongly suggest that Kadow was acting on behalf of Outback in fundraising for the Sharpe campaign.

Finally, it is apparent that other Outback executives, including Chris Sullivan, were instrumental in obtaining contributions for the Sharpe campaign, and that those who contributed understood this effort to be on behalf of Outback. The *Tampa Tribune* article quotes a number of contributors with Outback connections who explained the reasons for their contributions. One individual, Dearing Hockman, the spouse of an owner of an Outback franchise in Birmingham, Alabama, is quoted as saying: "We're Outbackers. We did this in support of Chris Sullivan." An Outback franchise owner in Virginia and Maryland, B.J. Stone, said that Sullivan and Robert Basham, Outback's current Chief Operating Officer, "explained things to us. It's a very strong partnership. We trust one another. If I needed something from Chris and Bob, they're there for me. It's the heart and soul of the organization."

Based on the evidence, Outback conducted a concerted effort to engender financial support for the Sharpe campaign. This effort went beyond allowable activity - such as partisan communications to a restricted class - to the collecting and delivering of contributions.

Moreover, Outback officer Chris Sullivan apparently approved of, and took part in, this activity by Outback.

Therefore, there is reason to believe that Chris Sullivan violated 2 U.S.C. § 441b(a).